UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BUDIMIR DAMNJANOVIC, and
DESANKA DAMNJANOVIC, Civil Action No.__________

Plaintiffs, Hon.____________________

vs.

UNITED STATES DEPARTMENT OF THE AIR FORCE,
SECRETARY DEBORAH LEE JAMES, in her official capacity as Secretary of the Air Force,
UNITED STATES DEPARTMENT OF DEFENSE,
SECRETARY CHARLES T. HAGEL, in his official capacity as Secretary of the U.S. Department of Defense, and

UNITED STATES OF AMERICA.

jointly and severally,
Defendants.

EPIC Law PLLC Hattem A. Beydoun (P66071) Office: Ste 606, 400 Monroe, Detroit MI 48226 Mail: Po Box 32598, Detroit MI 48232 Tel: (888) 715-8033 Fax: (313) 254-4923 Email: hbeydoun@epiclg.com Attorney for Plaintiffs	

COMPLAINT AND JURY DEMAND

1. Plaintiff's Budimir Damnjanovic, and Desanka Damnjanovic ("Plaintiffs") are inventors of the subject matter of U.S. Patent Application Serial Number 11/881,492 (the "Invention" or the "'492 Application").

2. The Commissioner of Patents of the United States Patent & Trademark Office ("USPTO"), as requested and notified by the Defendant Department of the Air Force, ordered that the Invention be kept secret and withheld the publication of the application or the grant of a patent pursuant to 35 U.S.C. § 181 by issuance of two secrecy orders issued January 22, 2009

and November 21, 2013 (“Secrecy Order”).

3. Plaintiffs seek just compensation under 35 U.S.C. § 183 for the damages and/or use of their invention by and from the Defendants Department Of The Air Force, Secretary Deborah Lee James (in her official capacity as Secretary of the Air Force), Department Of Defense, Secretary Charles T. Hagel (in his official capacity as Secretary of Defense), and the United States Of America (hereinafter collectively referred to as “Defendants” or “Government”). Plaintiffs seek restitution for any benefits received by the Defendants by imposition of the Secrecy Order declaring the Invention secret resulting in an inequity to Plaintiffs under unjust enrichment (Michigan common law). Plaintiffs also seek an order requiring Defendants to enact rules and regulations enabling the Defendants to carry out the requirements of 35 U.S.C. § 183 thereby allowing patent applicants under a secrecy order the ability to determine just compensation arising from damages to applicants.

4. In the alternative, this lawsuit challenges the Constitutionality of The Invention Secrecy Act of 1951 (Pub.L. 82–256, 66 Stat. 3, enacted February 1, 1952, codified at 35 U.S.C. §§ 181–188) (“Patent Secrecy Act”). Plaintiff seeks declarative relief that the secrecy provisions of the Patent Act are contrary to the provisions of the Constitution and are therefore unconstitutional.

PARTIES

5. Plaintiffs are citizens of the United States of America residing in Wayne County, Michigan.

6. Defendant United States Department of the Air Force (“Air Force”) is a military department within the Department of Defense of Defendant United States of America. The United States formed the Department of the Air Force on September 18, 1947, per the National

Security Act of 1947 and includes all elements and units of the United States Air Force.

7. Defendant Secretary Deborah Lee James is the Secretary of the Air Force. Secretary James has ultimate authority over the Air Force and is responsible and authorized for overseeing claims under 35 USC § 183.

8. Defendant United States Department of Defense is an executive agency of the United States government responsible for the administration, enforcement, and policies of the regulations which are the subject of this lawsuit and oversees the Defendant U.S. Department of Air Force.

9. Defendant Charles T. Hagel is the Secretary of Defense. Secretary Hagel has ultimate authority over the Department of Defense, of which the Air Force is a component.

10. The United States of America is also a Defendant.

JURISDICTION AND VENUE

11. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 35 U.S.C. § 183, 28 U.S.C. §§ 1331, 1346 and 1338. The Court also has jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 702. Plaintiffs have previously filed an administrative claim seeking just compensation, the Defendants having fully and unequivocally denied Plaintiffs' claim, Plaintiffs have exhausted their administrative remedies and have therefore acquired the right to file this action.

12. Plaintiffs' claims for declaratory relief are authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

13. Venue is proper under 35 U.S.C. § 183 and 28 U.S.C. § 1391(e) because Defendants reside in this district and a substantial part of the acts giving rise to Plaintiffs' claims

occurred in this district.

14. This Court has authority to award Plaintiffs their reasonable costs and attorneys' fees pursuant to 28 U.S.C. § 2412, 5 U.S.C. § 504, and the general legal and equitable powers of this Court.

BACKGROUND

15. Plaintiffs incorporate by reference all the above paragraphs as if fully set forth herein.

16. Plaintiffs filed the '492 Application with the USPTO on July 28, 2007.

17. The Commissioner of Patents issued a secrecy order directed to the '492 application on January 22, 2009 and a second secrecy order on November 21, 2013 pursuant to the directions of the Defendants.

18. Prior to the imposition of the Secrecy Order, Plaintiffs were planning on marketing and licensing their invention to third parties, possibly the Defendants, and seeking foreign patent rights.

19. The issuance of the Secrecy Order prevented Plaintiffs from marketing, advertising, selling or offering for sale, licensing, or even discussing the Invention with third parties.

20. Plaintiffs' ability to exploit and reap the rewards and benefits of their invention is premised on being able to disclose and market the Invention to potential customers and investors. However, due to the imposition of the Secrecy Order, Plaintiffs have been unable to disclose the details of his Invention to interested or third parties.

21. On November 21, 2011, the USPTO issued a Notice of Allowability on the '492 application, which indicated that although the claims of the application were now being allowed,

the application would still be withheld from issue during such period as the national interest required.

22. On or about June 20, 2012 and July 11, 2012, Plaintiffs properly and timely submitted an administrative claim to the Secretary of the Air Force and the Defendants for just compensation based on the imposition of the Secrecy Order issued on the '492 application, pursuant to 35 U.S.C. § 183.

23. From the time Plaintiffs submitted their administrative claim to the present, Plaintiffs have contacted, consistently provided information, and requested information from the Government in an attempt to resolve their claim.

24. The Government has not cooperated or assisted Plaintiffs in evaluating their Invention for purposes of determining just compensation under 35 U.S.C. § 183.

25. On March 20, 2014, the Government denied Plaintiffs claim for just compensation in its entirety.

26. Plaintiffs have exhausted their administrative remedies, and now seek relief in this Court.

COUNT I
JUST COMPENSATION PURSUANT TO 35 U.S.C. § 183

27. Plaintiffs incorporate by reference all the above paragraphs as if fully set forth herein.

28. By and through the Government's imposition of the Secrecy Order on the '492 application, Plaintiffs have suffered damages resulting from intrusion on their rights to their Invention; including but not limited to their right to sell or offer for sale the Invention, to market the Invention to the public and third parties, profits lost as a result of interference with business opportunities, and the loss of foreign filing rights.

29. By and through the Government's use of the Invention, the Government has not justly compensated Plaintiffs for the Government's use of the Invention.

30. If not for the imposition of the Secrecy Order by Defendants, the Invention can possibly and is likely to be used by third parties against and contrary to the interests of the Defendants.

31. The Defendants imposition of the Secrecy Order prevents the disclosure and/or the use of the Invention by third parties against and contrary to the interests of the Defendants.

32. Therefore, by keeping the Invention secret and unknown to third parties through imposition of the Secrecy Order, the Defendants have also used the Invention and/or benefited to the detriment of Plaintiffs.

33. Plaintiffs sought administrative remedies pursuant to 35 U.S.C. § 183 from the Defendants for the imposition of the Secrecy Order and/or use of the Invention once notification that the '492 application was in condition for allowance except for the Secrecy Order.

34. Upon presentation of the Plaintiffs' claim to the head of the Department of the Air Force for compensation for the damages resulting from the imposition of the Secrecy Order and/or use of the Invention, the Defendants refused to offer Plaintiffs any compensation.

35. As a result of the Government's imposition of the Secrecy Order, the Plaintiffs have sustained actual damages.

36. The Government has not offered or provided Plaintiffs with any compensation based on the withholding of the Invention and issuance of a patent through the imposition of the Secrecy Order as is statutorily required by 35 U.S.C. § 183 for purposes of just compensation.

37. The Government has not offered or made available to the Plaintiffs adequate means and/or information to determine damages and just compensation.

38. Plaintiffs and Defendants cannot reach an agreement as to just compensation for Defendants' imposition of the Secrecy Order and/or use of the Invention, and therefore seek relief from this Court on this issue.

COUNT II
UNJUST ENRICHMENT- 28 U.S.C. § 1346 & MICHIGAN COMMON LAW

39. Plaintiffs incorporate by reference all the above paragraphs as if fully set forth herein.

40. If not for the imposition of the Secrecy Order by Defendants, the Invention can possibly and is likely to be used by third parties against and contrary to the interests of the Defendants.

41. The Defendants imposition of the Secrecy Order prevents the disclosure and/or the use of the Invention by third parties against and contrary to the interests of the Defendants.

42. By keeping the Invention secret and unknown to third parties through imposition of the Secrecy Order, the Defendants have also used the Invention and/or received a benefited resulting in an inequity to Plaintiffs because of retention of the benefit by the Defendants.

43. The Plaintiffs have received a detriment and/or have been damaged because of Defendants retention of the Secrecy Order by, but not limited to, preventing Plaintiffs from marketing, selling, offering for sale, licensing, and/or applying for foreign patent rights for their invention.

44. Imposition of the Secrecy Order by the Defendants has unjustly enriched Defendants under Michigan common law to the detriment of Plaintiffs and Defendants are required to make restitution to the Plaintiffs for Defendants' gain.

COUNT III
IN THE ALTERNATIVE
DECLARATIVE RELIEF THAT 35 U.S.C. §§ 181-188 ARE UNCONSTITUTIONAL

45. Plaintiffs incorporate by reference all the above paragraphs as if fully set forth herein.

46. Plaintiffs hereby present its count in the alternative challenging the Constitutionality of The Invention Secrecy Act of 1951 (Pub.L. 82–256, 66 Stat. 3, enacted February 1, 1952, codified at 35 U.S.C. §§ 181–188).

47. The Secrecy Order prohibits the Inventors from disclosing the subject matter of the Invention. One who willfully violates the secrecy order will likely have his patent application held abandoned, lose his right to compensation, be barred from receiving a patent and may be subject to a substantial fine and up to two years in prison under 35 U.S.C. §§ 182, 184, 185, 186.

48. The First Amendment states "Congress shall make no law … abridging the freedom of speech, or of the press … ."

49. Because the Patent Secrecy Act prohibits Plaintiffs from speaking of their Invention to third parties, including potential customers, it violates the First Amendment of the Constitution.

50. The Patent Secrecy Act allegedly provides a method of just compensation for the imposition of the Secrecy Order and/or the Government's use of the Invention; however, the Patent Secrecy Act prohibits Plaintiffs from establishing damages and/or actual damages arising from the imposition of the Secrecy Order by prohibiting Plaintiffs from marketing, offering for sale, or otherwise disclosing the invention to third parties including possible customers, and/or taking advantage of foreign patent rights. Therefore, the Patent Secrecy Act does not provide a means for Plaintiffs to recover or establish just compensation and/or actual damages arising from the imposition of the Secrecy Order and/or the Government's use of the Invention.

51. The Fifth Amendment states: "No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

52. Because the Patent Secrecy Act requires Plaintiff to show damages and/or actual damages while contemporaneously prohibiting Plaintiffs from otherwise disclosing the Invention, the Patent Secrecy Act has resulted in Plaintiffs being deprived of property without due process and just compensation in violation of the Fifth Amendment.

53. Moreover, because the Secrecy Order prohibits Plaintiffs from discussing the Invention with anyone not aware of the Invention prior to the imposition of the Secrecy Order and loss of foreign filing rights, the Secrecy Order has resulted in loss of commercial gain and loss of foreign filing rights which amount to an unconstitutional taking by the Government contrary to the Fifth Amendment.

COUNT IV
DECLARATIVE RELIEF ORDERING DEFENDANTS TO ISSUE RULES AND REGULATIONS TO ENABLE THE DEFENDANTS TO CARRY OUT THE PROVISIONS OF 35 U.S.C. § 183

54. Plaintiffs incorporate by reference all the above paragraphs as if fully set forth herein.

55. The Defendants are required to provide a means to allow patent applicants, like Plaintiffs, whose invention is subject to a secrecy order, the ability to apply to the head of Defendants for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Defendants, resulting from applicant's disclosure for purposes of full settlement for the damage and/or use.

56. Pursuant to 35 U.S.C. § 188, the Defendants have not adopted or issued rules and regulations to enable the Defendants to carry out the provisions of 35 U.S.C. § 183 including but

not limited to determining just compensation arising from damages and/or actual damages to applicants.

57. Therefore, in order to assure that applicants are compensated and for purposes of carrying out the provisions of 35 U.S.C. § 183, Defendants should be ordered to enact rules and regulations enabling the Defendants to carry out the requirements of 35 U.S.C. § 183 and allowing applicants the ability to determine just compensation arising from damages to applicants and/or use of the invention by the Government.

RELIEF REQUESTED

WHEREFORE, Plaintiffs requests judgment in their favor, including a demand for judgment against Defendants for just compensation arising from the Defendants imposition of the Secrecy Order and/or for the use of the Invention by the Defendants, and such other and further relief, including costs and fees pursuant to 28 U.S.C. § 2412, as the Court deems proper. Plaintiffs further request restitution to the Plaintiffs for Defendants' gain arising from the imposition of Secrecy Order. Plaintiffs also request an order directing Defendants to enact rules and regulations enabling the Defendants to carry out the requirements of 35 U.S.C. § 183 thereby allowing applicants the ability to determine just compensation arising from damages to applicants and/or use by the Government. In the alternative, Plaintiffs request that the Court declare that The Invention Secrecy Act of 1951 (Pub.L. 82–256, 66 Stat. 3, enacted February 1, 1952, codified at 35 U.S.C. §§ 181–188) unconstitutional for violating the First and Fifth Amendments to the Constitution.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury in this action on all issues so triable.

Respectfully submitted,

Dated: May 14, 2014

/s/Hattem Beydoun________
EPIC Law PLLC
Hattem A. Beydoun (P66071)
Office: Ste 606, 400 Monroe, Detroit MI 48226
Mail: Po Box 32598, Detroit MI 48232
Tel: (888) 715-8033 Fax: (313) 254-4923
Email: hbeydoun@epiclg.com
Attorney for Plaintiffs